

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON
TRANSCRIPT OF PROCEEDINGS

IN RE: C.R. BARD, INC., PELVIC REPAIR MDL NO.
SYSTEM PRODUCTS LIABILITY LITIGATION 2:10-MD-2187

IN RE: AMERICAN MEDICAL SYSTEMS, INC., MDL NO.
PELVIC REPAIR SYSTEM PRODUCTS 2:12-MD-2325
LIABILITY LITIGATION

IN RE: BOSTON SCIENTIFIC CORPORATION MDL NO.
PELVIC REPAIR SYSTEM PRODUCTS 2:12-MD-2326
LIABILITY LITIGATION

IN RE: ETHICON INC., PELVIC REPAIR MDL NO.
SYSTEM PRODUCTS LIABILITY LITIGATION 2:12-MD-2327

IN RE: COLOPLAST CORP. PELVIC SUPPORT MDL NO.
SYSTEMS PRODUCTS LIABILITY LITIGATION 2:12-MD-2387

IN RE: COOK MEDICAL, INC., PELVIC REPAIR MDL NO.
SYSTEM PRODUCTS LIABILITY LITIGATION 2:13-MD-2440

STATUS CONFERENCE
September 19, 2013

BEFORE THE HONORABLE **JOSEPH R. GOODWIN**, District Judge
AND
THE HONORABLE **CHERYL A. EIFERT**, Magistrate Judge

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P R O C E E D I N G S

DISTRICT JUDGE GOODWIN: Good morning.

I see that I have helped out the Embassy Suites and the Marriott Hotel. It's nice to see everybody.

The following attorneys are excused from today's conference. Before I mention their names, let me say I'm noticing a trend of more excuses being asked for. And I would ask all counsel to go back and re-read the pre-trial order dealing with service on the, in the various offices, the MDLs.

Dustin Rawlin, Mike Farrell, Mike Bonasso and Elizabeth Taylor, Mark Mueller.

If you're not on this list and are absent today, you've not been excused.

The agenda has the potential to be lengthy. I'll ask for your assistance in keeping it as brief as we can while addressing the issues in as much depth as is required.

The first item on the agenda is titled "Tolling Issues/Timing and Volume of Filing Complaints."

Let me just say generally that I'm agreeable to a reasonable extension of the January 15th deadline contained in the amended order regarding delayed filing, but I'd like to hear from you.

Who will address this?

MR. GARRARD: Your Honor, --

1 DISTRICT JUDGE GOODWIN: Mr. Garrard.

2 MR. GARRARD: -- on the plaintiffs' side, it is
3 clear that many law firms have more cases that need to be
4 filed than can be accommodated by the 10 per week per
5 plaintiff's firm.

6 We would simply request that there be a 60-day
7 extension at this point for filings. Alternatively, we
8 could seek leave to file more cases, but I understand that
9 that may become quite burdensome -- more cases per week.
10 That might become burdensome on the Clerk's Office.

11 So, in discussions, our request is that the Court at
12 this point grant us 60 additional days, and that we then be
13 obliged to report back to the Court probably in 60 days and
14 see where we are.

15 DISTRICT JUDGE GOODWIN: Let me hear from the
16 defendants as these matters are by their grace and good,
17 good nature.

18 MS. JONES: Your Honor, if I might, Christy Jones
19 for Ethicon.

20 DISTRICT JUDGE GOODWIN: Yes, ma'am.

21 MS. JONES: I, I understand the demands that are
22 placed on the Court and staff. Frankly, I think there are
23 some problems that have been made for the defendants that
24 were unforeseen by this including, as Your Honor is well
25 aware, the fact that we now have thousands of these cases

1 that have been served but not filed.

2 We're not sure whether they're going to be filed. And
3 we have very little information about those cases which
4 presents additional problems when Your Honor is interested
5 in moving along on some other timetables.

6 So, what I would say first is to the extent that the
7 Court deems it necessary, and obviously that's the Court's
8 prerogative, but, but, secondly, one issue that has come
9 up -- and I apologize to the Court, I didn't realize until
10 this morning -- is that when cases are filed, we are not
11 being served or advised of the filing.

12 And because of that, we've then been required to go
13 back to the, to the Clerk's Office and obtain at our cost a
14 copy of the filed docket.

15 So, whatever the Court does, I would ask that, that
16 when the plaintiffs file, actually file the complaint, that
17 they serve us with a copy of the filed complaint so that
18 we're not incurring the additional cost of having to go to
19 the Clerk's Office and reimburse the clerk for getting that.

20 DISTRICT JUDGE GOODWIN: I need help because I
21 have to admit that I don't quite understand the process as
22 it exists. I thought of things as sort of served, or filed
23 but not served or served or vice versa. I don't, I don't
24 remember what was in the contemplation of the parties. I
25 know Kate does, but --

1 Who, who can help me out here?

2 Here's -- Mr. Garrard, one of my problems with like a
3 60-day extension is I don't, I don't think if I said six
4 months that I wouldn't get to the end of the six months and
5 not have a problem. So, I need some reasonable amount of
6 time and some mechanism. And I know the clerk is still
7 going to get slammed.

8 MR. GARRARD: Well, the practical problem is that
9 we're trying to accommodate what is necessary from the
10 Clerk's Office. At the same time, there are a large number
11 of cases to be filed. And practically they cannot get filed
12 at 10 per week per plaintiff's firm by January 15th.

13 DISTRICT JUDGE GOODWIN: Well, it sounds to me
14 like we're going to need to increase the number of filings
15 per week.

16 MR. GARRARD: I think, Your Honor, that would be
17 helpful. I also believe that in deference to the Clerk's
18 Office, some extension of time would be necessary.

19 In terms of Ms. Jones's concern about not being
20 notified of the filing, I'm getting all sorts of letters
21 from firms informing me that they have filed cases.

22 Frankly, I hadn't looked at those letters close enough
23 to know if Christy's been notified of that or not. But I
24 don't see a problem. If the need is that they receive a
25 copy of the complaint, fine. I don't see any problem with

1 that.

2 MS. JONES: I, I think that that's what we need,
3 Your Honor, is that some -- we're sometimes getting a letter
4 saying it's been filed, but we don't actually have a filed
5 copy of the complaint which is what we need. So, we just
6 need counsel to serve us with a filed copy when it is
7 actually filed.

8 DISTRICT JUDGE GOODWIN: Do they know who to send
9 it to?

10 MR. GARRARD: Yeah.

11 DISTRICT JUDGE GOODWIN: Would they know who to
12 send it to?

13 MR. GARRARD: Yes, sir, they do.

14 DISTRICT JUDGE GOODWIN: All right. Let's have
15 them do that then.

16 MR. GARRARD: And maybe Ms. Jones and I could just
17 work together to create something that could be submitted to
18 the Court as an amendment. And if we continue --

19 DISTRICT JUDGE GOODWIN: I'm very agreeable to the
20 working together solution.

21 MR. GARRARD: We continue the tolling while this
22 goes on, but we'll try to get it done.

23 DISTRICT JUDGE GOODWIN: And I think you are going
24 to have to increase the number of cases filed if there are,
25 if there is this large volume out there. But I think 60

1 days is too long. I'm perfectly willing to consider a
2 30-day extension, but 60 days is too long.

3 MR. GARRARD: So long as the Court will let us
4 come back to you. Not wanting the Court to be misled, at 10
5 per week, 30 days won't do it either. So, whatever we can
6 do, the Clerk's Office to increase it, we would like to do
7 that.

8 DISTRICT JUDGE GOODWIN: Well, I think, I think
9 you're going to just take the 30 days as a given, as an
10 outside limit, and then tell me how many per day we have to
11 do in your best judgment to get there.

12 MR. GARRARD: May, may we work with Ms. Fife in
13 terms of what, --

14 DISTRICT JUDGE GOODWIN: Yes.

15 MR. GARRARD: -- what the Clerk's Office can
16 accommodate, Your Honor?

17 DISTRICT JUDGE GOODWIN: Right. And they may get
18 behind. But if they do -- no Clerk's Office in the country
19 has as many filings. We are using personnel from other
20 Clerk's Offices to help us. We have a Clerk of Court that
21 is very good and very careful. And you can tell that from
22 the quality of the entries that you're seeing later. You
23 don't want to compromise the quality of the entries. But we
24 may experience some delay if we get these large numbers.
25 But that just may be something we can't help.

1 MR. GARRARD: Well, we'll get with Ms. Jones and
2 with Kate and try to get it worked out, Your Honor.

3 DISTRICT JUDGE GOODWIN: All right.

4 Anything else on that?

5 MR. GARRARD: No, sir.

6 DISTRICT JUDGE GOODWIN: The next item on the
7 agenda is the general status of the bellwether process. I
8 could go on about that for a while, but who, who will
9 address that?

10 MR. GARRARD: Your Honor, I put that on there
11 having had the experience and pleasure of being before Your
12 Honor for quite some time this summer because I thought that
13 there would be a large assemblage here, and that perhaps
14 just a sort of update on where we are would be appropriate.

15 From our standpoint, we have more Bard cases scheduled.
16 Your Honor is aware of the issue in regard to the *Rizzo*
17 case. And I think perhaps we know where that's going. And
18 we have the *Jones* case set for trial, I believe, November
19 the 12th. I know that the AMS cases have been moved. I'm
20 not sure of the date that they will be reset. And there are
21 Johnson & Johnson, Ethicon cases set, I believe, in January.

22 And there's just some element of movement in terms of
23 the schedule and where they are. And we just felt that
24 perhaps there's some discussion Your Honor might want to
25 have in relation to that as well.

1 DISTRICT JUDGE GOODWIN: Well, I think it's fair
2 to say that as of today, I'm not as big a fan of bellwether
3 cases as Judge Fallon is. On the other hand, I haven't
4 determined any alternative solution at this time.

5 And my proposal is -- and I think Kate suggested I
6 might come up with a better word but it's the only word I
7 know. I'm going to keep the bulldozer moving, and we will
8 continue to try bellwether cases.

9 There will be some adjustments in trial dates because,
10 frankly, I've had very good lawyers involved who have done a
11 good job of getting their cases ready on very ambitious
12 schedules. And we're going to stay busy. I've actually had
13 a couple weeks off. It's been kind of nice.

14 But we're going, we're going to go forward with the
15 bellwether process. You should have a pretty good idea from
16 Kate in the near future of where, for example, Ethicon and
17 AMS are on the dates.

18 We've had conversations with counsel for plaintiffs and
19 defendants in those cases about differences in trial dates.
20 We have some docket control orders that are still to be
21 submitted. But it's, it's, it's taking shape. And I think
22 it's fair to say that within the next few days, you'll know
23 exactly what the schedule looks like, or we'll try to do
24 that.

25 Anybody want to talk about that any more?

1 MS. COHEN: Judge, I might just add --

2 DISTRICT JUDGE GOODWIN: Yes, ma'am.

3 MS. COHEN: Good morning, Your Honor. It's a
4 pleasure to see you again.

5 DISTRICT JUDGE GOODWIN: It's good to see you.

6 MS. COHEN: And just to --

7 DISTRICT JUDGE GOODWIN: Are you still living at
8 the Embassy Suites?

9 MS. COHEN: You know what. I actually got back
10 last night and there was such a warm greeting there, I felt
11 like I was coming home. My same room was saved for me, so
12 it was a pleasure.

13 But, you know, just to respond to what Mr. Garrard
14 said, as I think we all saw this morning, the third
15 bellwether in the Bard litigation, plaintiffs moved to
16 dismiss it with prejudice this morning. And, so, to the
17 extent necessary, we'll respond to that as needed.

18 And then beyond that, we do have the *Jones* trial coming
19 up in November. We do think -- we agree with Your Honor.
20 And I re-read Judge Fallon's *Law Review* article last night,
21 in fact, on bellwethers from 2008.

22 DISTRICT JUDGE GOODWIN: I did too.

23 MS. COHEN: Yeah. And, I mean, I think his points
24 are well-taken that it is a process that can work, and we
25 are still --

1 DISTRICT JUDGE GOODWIN: He tried about 10 cases,
2 as I recall, in the Vioxx -- maybe I'm overestimating it.

3 Does anybody remember? I think was about 10.

4 MS. COHEN: I think it was about 10. That's the
5 number I have in mind, Your Honor.

6 DISTRICT JUDGE GOODWIN: And my default position
7 as a trial judge is to try cases. I am not so sure that I
8 wouldn't be better off just reaching in a paper bag and
9 pulling out a case number than I would with the process
10 we've used so far. And I don't mean that as disrespectfully
11 as it sounds. But it does reflect my disappointment in the
12 cases that I've got currently on the trial calendar.

13 But we'll -- we're going to keep doing that. I have
14 other things that, some of which you're going to address
15 today on either side like consolidation that I'm
16 considering.

17 I know that all of you are considering ideas for
18 settlement protocols to the extent that there's any
19 possibility of that. I said without joking that I don't
20 have 30,000 minutes left in my life without thinking that I
21 can deal with in any individual way 30,000 cases, nor can
22 the federal judiciary as a whole try 30,000 additional
23 cases. We can't, can't. So, we have to find another way.

24 But, as I said and got a laugh yesterday, and I hope I
25 will today, I can make your lives so miserable that it will

1 otherwise be resolvable. And I didn't mean that -- I didn't
2 mean -- I didn't mean to be mean. I just meant there are
3 mechanisms and ideas and things that I can do that will move
4 things along, and I intend to see that.

5 I don't plan for any pause while we contemplate our
6 navels. We're going to keep moving forward. We're not
7 going to gaze into crystal balls and think of where we're,
8 where we're going to be. On the other hand, I'm not going
9 to just waste your time or my time.

10 Let's get to that consolidation item on the agenda.
11 I've asked for the parties' submissions. I have barely read
12 half of the plaintiffs' response this morning. I didn't
13 read it all.

14 So, I'll let the plaintiffs go first.

15 MR. GARRARD: Your Honor, we have -- may I just
16 stand right here?

17 DISTRICT JUDGE GOODWIN: You may.

18 MR. GARRARD: We have decided that I will make the
19 presentation in regard to consolidation, and that after the
20 defendants present whatever they present that Mr. Clark will
21 make a rebuttal presentation. And if he screws it up, I'll
22 perhaps say something else.

23 But where --

24 DISTRICT JUDGE GOODWIN: He's smiling.

25 MR. GARRARD: He did. It may be the only remedy I

1 get of the day, Your Honor.

2 Where we need to start, from our perspective, is two
3 places, or maybe three.

4 One is we fully agree with Your Honor that bellwethers
5 need to continue at the greatest pace possible.

6 Secondly, we need to talk about the human element which
7 I think is lost in where we are.

8 And, thirdly, we will talk to the Court about what we
9 have proposed as a consolidation plan. I must say I'm
10 disappointed that Your Honor did not read with great vigor
11 our presentation. But --

12 DISTRICT JUDGE GOODWIN: I was late to work.

13 MR. GARRARD: You should have been with me last
14 night as I was getting e-mails, Your Honor, from people
15 telling me what to do at 11:30 and 12:00 at night.

16 But I want to talk first about the human element. And
17 it's very real. And I'll tell you how real it is. After we
18 tried the *Cisson* case and we got the verdict, and as one
19 would expect, citizens in various places and clients in
20 various places heard about it and they wanted to know about
21 it.

22 And last week we had a meeting with people from my
23 firm -- I was not here, but the senior members of my firm
24 were here, Mr. Farrell was here -- with individuals that we
25 represent from West Virginia. And we had about 50 people

1 there.

2 And one of my paralegals who has worked on this since
3 the very beginning came in and she sat down in my office and
4 she started crying. And she said, "Henry, you've got to do
5 something. Our clients feel as if we have abandoned them,
6 and they want to know when do they ever get to say their
7 piece."

8 And to give you a couple of examples, we have a lady --
9 and I won't use names because I don't think it's appropriate
10 to do that in here at this point. We have a lady who's a
11 West Virginian who is from Huntington. She had surgery
12 using one of the defendant's products.

13 She wound up going to Christ Hospital in Cincinnati
14 where there's a Dr. Mickey Karram, and he did three
15 surgeries on her. And she wound up with what's called a
16 neovagina.

17 And for Your Honor's benefit, a neovagina means that
18 her vaginal canal had been destroyed, and destroyed to the
19 point that it was no longer essentially there. And this
20 doctor took tissue from this lady and he created this thing
21 they call a neovagina. They use colon tissue. And it
22 didn't work. And she got this work done at Christ Hospital
23 as a charity patient.

24 We have call after call -- and I'm sure my office is no
25 different than others. We have call after call from clients

1 that say, "I have no insurance and I have no money, and I've
2 been told I need surgery," or, "I'm in a certain
3 circumstance. What do I do?"

4 And I have a lady in my office who is dedicated to
5 calling hospitals and saying, "Do you have a charity
6 program? Will you consider this?"

7 I'm, I'm pleased to say that in Cincinnati, Christ
8 Hospital does. I'm pleased to say that the Cleveland Clinic
9 in Cleveland does.

10 Well, this particular lady, after she had the neovagina
11 created and then mesh eroded into it, it destroyed it. She
12 was then sent to Cleveland to -- not, not Cleveland -- to
13 the Mayo Clinic to a high-level specialist who then said,
14 "I'm going to try something on you but, ma'am, you need to
15 understand it's experimental and I don't know if it will
16 work or not."

17 And she went to him. But she had to borrow money --
18 and they also did it on a charity basis. She had to borrow
19 money in order to get there.

20 And she sits in this meeting and she says to my people,
21 "What's going to happen to me and when do I get it
22 addressed?"

23 And out of that meeting, there was also one lady who
24 was not there. And we found out why she was not there. She
25 was in a hospital in Huntington. And we had also gotten

1 charity care for her.

2 And she had that week been transported by ambulance to
3 the Cleveland Clinic. They had examined her. The mesh had
4 done things to her internally to the extent that she could
5 not move her bowels. She had had no solid food for two
6 weeks. She was on a feeding tube. And I, frankly, don't
7 quite understand how that gets removed as waste material.

8 But she had been transported by ambulance to the
9 hospital there. They looked at her. They examined her.
10 And then they sent her back to Huntington to have more tests
11 done. When she got back to Huntington, Huntington said, "We
12 can't do those tests."

13 So, she's then transported back to the other hospital
14 to see what they can do and whether they can do surgery on
15 her. But she's also destitute.

16 Yesterday I got an e-mail -- and Your Honor has heard
17 me make these vignettes before, but they're true. I got an
18 e-mail from a lady who literally used four-letter words with
19 me, telling me what a poor lawyer I am because I'm not
20 moving her case.

21 And one of the points that I, I feel obligated to make
22 on behalf of my clients, and I think this fits everybody's
23 clients, is that many of these people have real injury. And
24 a horrible number of them -- and I don't know how this fits
25 with ObamaCare because I, frankly, don't even understand it.

1 I don't know how it fits with where we are as a society.

2 But many of these people do not have health insurance
3 and they have no money and they have no job. And while I
4 know that arguments can be made that there are cases that
5 shouldn't be filed, I'm not debating that. But there are
6 many, many cases that are filed that are very real and women
7 from this state and others are very hurt. And they don't
8 have the resources to get the care that they need.

9 I could go into story after story, but I would probably
10 lose the Court's attention if I did that. But I wanted to
11 start our --

12 DISTRICT JUDGE GOODWIN: You have used up a lot of
13 your 10 minutes.

14 MR. GARRARD: I didn't know I had just 10 minutes,
15 Your Honor.

16 I wanted that to be something that is real in relation
17 to this.

18 In terms of consolidation, one of the reasons that we
19 believe consolidation is very important is because it can
20 satisfy a couple things.

21 On the one hand, the defendants say, "We need lots of
22 trials to decide what we're going to do." I'm not sure that
23 they really do, but let's assume that they do.

24 I've heard that one defendant says, "I need to try 30
25 cases before I'm going to do anything." So, we say, "Okay,

1 if that's the case, let's consolidate some cases." And if
2 this Court were inclined to consolidate 15 cases at a time
3 as to that defendant, then in two consolidated trials we
4 could satisfy that need for 30 cases.

5 I'm not going to argue to the Court the Rule 42
6 provisions. This Court knows those provisions quite well.
7 The law is quite clear that Your Honor can consolidate cases
8 if you are so inclined. It's been done before.

9 Interestingly, Mr. Rice is back here from the Motley
10 Rice firm. He and I tried a case called *Cimino*. And Joe
11 probably remembers how many years ago it is. I try to
12 forget how many years ago it was. He was on the plaintiffs'
13 side and I was on the defendant's side.

14 I begged. I pleaded. I filed motions, et cetera,
15 saying, "You can't do this." Well, the Court did do that,
16 and the Fifth Circuit upheld the consolidation portions of
17 it. Some extrapolation portions that the Judge attempted to
18 do, the Fifth Circuit said, "You can't do that." But in
19 terms of the consolidation, the Court upheld that.

20 And, and the point I wanted to make is while I didn't
21 want that at the time, my client didn't want it at the time,
22 it actually worked. And how do I know it worked? There
23 were 10 class -- it was a combined class in consolidation.
24 There were 10 exemplars. I actually won one of the
25 exemplars.

1 And, so, my point in that is that within that
2 consolidation, I have to say it worked because they were not
3 all plaintiffs' verdicts. There was a defense verdict.

4 I have tried other consolidated cases, as have other
5 people in this courtroom. And Your Honor is aware of all
6 that. So, it, it can be done. When you do the Rule 42
7 analysis, these cases beg for consolidation. It is not
8 overwhelming to a jury.

9 What we have proposed to Your Honor is this: That Your
10 Honor tell us the number. And we have proposed that Your
11 Honor start with West Virginians who have filed cases in
12 this court. I don't think anybody could dispute that you
13 have the power to do as you want to in regard to those cases
14 from a consolidation standpoint, and that we start at that
15 point.

16 If you take Bard, for example, our proposal is that
17 there are Avaulta cases, the Avaulta Biosynthetic, the
18 Avaulta Plus, and the Avaulta Solo which you heard a lot
19 about a couple weeks ago. Those cases from a corporate
20 discovery standpoint are such that we could try
21 consolidations now.

22 We are asking the Court -- and I'm not just focusing in
23 on Bard as I'm sometimes accused of doing. I'm using that
24 simply as an example.

25 We propose that Your Honor tell us how many cases you

1 would like to have consolidated. In the proposal that we
2 made, we said you let us select three quarters of them and
3 put it there and put the burden upon us to select cases that
4 meet homogeneity, that have the same state's law, and that
5 the defendants select 25 percent of the cases.

6 Why do we do it that way? One of the reasons that we
7 suggest that is that we then avoid the back and forth
8 debate, fight, whatever, as to: Is this an appropriate
9 case? Is that an appropriate case?

10 You put the burden upon us to come to you with cases
11 that are appropriate and would pass muster under Courts of
12 Appeals or whatever examination that we submitted to you.

13 You tell us how many and you tell us when. And we have
14 the burden then to bring to you either as three quarters/one
15 quarter, or you can put the burden upon us and say,
16 "Plaintiffs, you come to me with cases that will fit in
17 terms of homogeneity, in terms of state law, and let's go."

18 We can start with West Virginia. That's the nidus of
19 this litigation right now. We suggest to the Court that we
20 have a consolidation as relates to that. We suggest to the
21 Court that we can do more than one consolidation at a time,
22 and we can do bellwethers.

23 The Court, I believe, has the authority to utilize the
24 Huntington division if you wanted to, and that you could
25 give the Bard cases, for example, to the Huntington division

1 and say, "I would like you to try these cases," or however
2 Your Honor was inclined to do that.

3 We recognize that one of the problems that exists is
4 you only have so many hours in a day that you can try cases.
5 And, so, we are suggesting that we reach out and we utilize,
6 for example, the Huntington division.

7 At the same time, if Your Honor were inclined to do
8 that, we would suggest that there be a consolidation set up
9 of Ethicon cases. We think that the Prolift case has been
10 tried in New Jersey and that it is prepared to an extent it
11 could be tried. Your Honor already has a TVT case
12 scheduled, or cases scheduled, I think, in January. Let
13 them go forward. But, at the same time, let's set up a
14 consolidation.

15 The same thing would be true in regard to AMS. There
16 are AMS TVT cases set for trial currently in December, but I
17 understand they're going to move.

18 At the same time, let's set up an Apogee-Perigee case.
19 That case has been worked up previously by Ms. Binis and by
20 Ms. Eskin. It is in a place from a corporate standpoint
21 that it could be made ready for trial.

22 As far as Boston Scientific is concerned, it is my
23 understanding that the Pinnacle and the Obtryx cases by
24 December will be done, from a corporate standpoint that they
25 could also be consolidated.

1 We would only need to do some expert work because we
2 would want to be able to put certain, perhaps different
3 experts into the mix. And we would need to do whatever the
4 number is of exemplars, some deposition discovery or other
5 discovery with regard to that, but place a date upon us.

6 I have suggested in what I submitted to the Court on
7 behalf of the plaintiffs that we start having consolidated
8 trials in February. Perhaps I'm overly optimistic. I may
9 be. Some of my brethren say that I am. But if we don't go
10 ahead and get started with something like that, then a year
11 from now we'll be talking about, "Well, how many bellwethers
12 have we tried?"

13 We think that it can be done concurrently. We think
14 also at some point in time it may be appropriate for Your
15 Honor to consider some remands. But we think that the
16 process of continuing with the bellwethers but, at the same
17 time, setting forth consolidations of cases can help move
18 this process forward.

19 The bottom line, Judge, is that without the fire being
20 to our feet and their feet, it won't happen. At the end of
21 the day, we all have a common problem. And you've heard me
22 say this before. We all have a common problem in terms of
23 the cases, the number of cases, what should be settled, what
24 shouldn't be settled.

25 But something has to happen to cause engagement of

1 minds to solve that problem. And we think putting
2 consolidation together with the bellwethers is something
3 that Your Honor could do.

4 The authority is there to do it. We can start with
5 West Virginia. That's the nidus of this. It would be one
6 state's law that had to be applied there. And you put the
7 burden upon us to come to you with cases. And we're ready
8 to do that.

9 If we don't, I fear that -- and I'm almost as old as
10 you. I may not have many more minutes left in this life
11 than you do.

12 DISTRICT JUDGE GOODWIN: I have refused to divide
13 30,000 by 365.

14 MR. GARRARD: I haven't either, Judge. I don't
15 want to.

16 But if we don't, we'll be sitting here worrying about
17 this stuff in a year. And there's really no reason why we
18 can't do these things that we are suggesting and move these
19 cases to a point where the two sides want to sit down and
20 come to a mutual resolution.

21 And one of the things that gives me, Judge, some reason
22 for optimism is this. When we resolved the *Queen* case, as
23 Your Honor will recall that day, after that case was
24 resolved, Judge, Bard asked to speak to Ms. Queen and
25 Mr. Queen. And we agreed.

1 And I want to say to Bard that -- and I told the
2 representative of Bard this afterwards. The representative
3 of Bard, two of them -- one of them is in the courtroom
4 today -- went in to see the Queens. And they expressed in
5 my mind sincere compassion towards the Queens. And I
6 thanked them for that after that, and I sent an e-mail to
7 one of them after that thanking them for that.

8 That led me to believe that there is optimism because I
9 think that those representatives of Bard clearly recognized
10 the circumstance of the Queens, and they made a sincere
11 representation of that to them.

12 So, I have optimism that it could happen. But I have
13 pessimism that you and I will be here having this discussion
14 a year from now if we don't go ahead and engage in a
15 consolidation approach.

16 I've tried a number of consolidations. It can be done.
17 The Court is very good at instructing juries. They do
18 listen. I've tried consolidated mesh cases. I've tried
19 consolidated asbestos cases all over this country.

20 In this city right now, there's a consolidated docket
21 that goes on every month of 20 cases. It works. Judge
22 Starcher, as Your Honor knows well, has written on this
23 issue as a Justice of the Supreme Court of West Virginia on
24 the need for consolidation.

25 We think it exists. We think it's time. And we urge

1 Your Honor to consider the proposal that we have made. We
2 stand ready to modify it in any way that Your Honor deems
3 necessary. We stand ready to suggest cases to the Court.
4 We urge that we start with West Virginia, and then we figure
5 out together with them and with Your Honor where we can go
6 from there, but we start.

7 Thank you.

8 DISTRICT JUDGE GOODWIN: Who will speak for the
9 defendant?

10 MS. COHEN: Good morning, Your Honor.

11 DISTRICT JUDGE GOODWIN: Good morning.

12 MS. COHEN: Thank you. I will start and then I'm
13 sure others may want to chime in as well.

14 So, you know, I've often been in the court listening to
15 Mr. Garrard's vignettes. And I'm sure that he has many
16 sympathetic plaintiffs. And, of course, as he just said, we
17 on the defense side, our clients and all of us, are very
18 compassionate and sympathetic to these plights and these
19 stories.

20 But what I want to start with is just to remind the
21 Court and everyone that, that on the defense side looking at
22 the data, that for every plaintiff described like that,
23 there are probably 10 who have cases where there's either no
24 injury, where there's no causation, where there's no product
25 ID where the case shouldn't be filed.

1 And, so, we want to start with that point because I
2 think that's an important place to begin. And, as you know,
3 Your Honor, from our submission -- and we submitted on
4 behalf of Bard and Sofradim our letter on September 16th.
5 And then we had a separate one --

6 DISTRICT JUDGE GOODWIN: I did read that.

7 MS. COHEN: And we had a separate one specific to
8 *Cisson* also.

9 But as we said there, we think one of the starting
10 points before we get to the consolidation issue -- and I
11 think Your Honor knows well how we feel about, about that,
12 but I'll talk a little bit about that. We think there are
13 options and techniques and strategies and motion practice
14 that can be put into place to deal with some of these
15 issues, that is, culling down the numbers and reducing the
16 numbers of what we would call perhaps not frivolous cases,
17 but cases that do not come even close to the type that Mr.
18 Garrard's describing.

19 And then I guess the other thing I would mention is
20 when Mr. Garrard talks about this, you know, the overall
21 numbers and talks about West Virginia and talks about the
22 cases that are, I guess, prepared and ready to go to trial,
23 if you look at the actual data of the ones he's talking
24 about in West Virginia, and there are some 200 cases on the
25 list and I'll talk a little bit more about that, the ones

1 that follow, at least for Bard and the Avaulta set, there
2 are only 10 of them.

3 So, when we talk about the data and the numbers, the
4 ones that are truly in this category, there are very few
5 numbers of those cases.

6 And then overall when we look at our, you know, overall
7 data, and I'll talk a little bit more about that as well,
8 look at the overall data, there are probably, you know, some
9 8,000 cases just talking about the Bard data right now. And
10 probably only one-eighth of the overall number of cases
11 relates to these types of cases, the Avaulta cases that Mr.
12 Garrard is talking about. At least a third of the cases
13 relate to SUI cases, the Align products and others, that
14 have not been developed yet.

15 So, I think that's something that we need to think
16 about in terms of the data as we look at what's ready to go
17 to trial and what's ready to proceed.

18 But before I get to the actual numbers, I do want to
19 say also that in terms of the consolidation, and we've
20 talked a good bit about this in our submissions, you know,
21 we think the case law that Mr. Garrard cites to, a lot of it
22 does relate to asbestos cases. A lot of the consolidation
23 examples that Mr. Garrard speaks about are cases where there
24 are common facts of law and common issues of fact under Rule
25 42.

1 But as I think we described in our submission, you
2 know, at great length, Your Honor, is that these cases, that
3 is, these types of cases, the mesh cases, as Your Honor saw
4 in our initial trials here, the issue is whether it be of
5 design defect or other issues. There are very individual
6 issues at play, both in terms of the law and facts.

7 And even if we take -- I know Your Honor had told us in
8 chambers one day that the consolidation vision or what you
9 were considering or thinking about related to design
10 defects. So, I'll take that as an example.

11 And as we said in our submission, when you look at the
12 design defect aspects, even within that, within a so-called
13 homogeneous category -- and we, obviously, take issue with
14 how homogeneous you can actually make any of these cases.

15 But if you look at a design defect case, taking
16 Ms. Cisson's as an example, you know, it's very hard to
17 think about even other Avaulta cases being homogeneous with
18 that if you look at issues like timing of implant, date of
19 implant, implanting physician, all of which goes to
20 state-of-the-art, state of mind, all of which are part of
21 the analysis related to a design defect issue.

22 Also, of course, as you saw with Ms. Cisson, there's an
23 analysis of the histology, the slides, the pathology, you
24 know, the actual mesh itself.

25 These are just some examples, some of which we've

1 talked about in our submission, that we think really cuts
2 against the ability of the Court but, more importantly, of
3 any jury to be able to look at these cases in a consolidated
4 manner.

5 There are just so many individual facts, not to mention
6 the legal issues, that we think would make it tremendously
7 difficult to try these cases in a consolidated way. So,
8 that's one of the, obviously, the issues that we raised.

9 And even though Rule 42, as Mr. Garrard talked about,
10 does certainly give Your Honor the right to consolidate
11 trials, again, as we said in our submission, there are many
12 legal and logistical impediments to consolidating these
13 types of cases.

14 Again, I, I read over Judge Fallon's lengthy *Law Review*
15 article last night, as I'm glad to hear you did as well.
16 And he talked about -- and this really cuts sort of against
17 the consolidation issue, but also for the bellwether process
18 and MDLs generally, that these are -- there are many
19 individual issues that make bellwether trials really the
20 better tool and the more, you know, appropriate tool for
21 trying to get these cases to the ultimate resolution, to the
22 finish line, which I know is so vitally important to Your
23 Honor and that we've talked about many times.

24 The other thing I think is important to mention, we
25 said this in our submission, is not just are all these

1 logistical, factual, legal impediments and individualistic
2 factors that come into play here, but if we were to do --
3 and I think this is a really important part -- what Mr.
4 Garrard is talking about and I'm sure others will talk
5 about, if we were to take -- and I'll give some examples --
6 consolidated trials, whether we take an Align case from
7 Texas or we take, you know, one of AMS's products from, from
8 a given state, we're not going to make any more economical
9 or efficient -- I'll talk about the confusion and prejudice
10 aspect too.

11 But if you're just looking at efficiency and helping,
12 you know, as Mr., take Mr. Garrard's point, helping these
13 clients, you know, find their day in court, helping our
14 clients in defense get their day in court, this method is
15 only going to increase the number of trials and lengthen the
16 trial, the time period in my opinion, in our opinion.

17 And what I mean by that is -- let's just take an
18 example. If we were to try some consolidated cases --
19 let's, let's go to Georgia, where I'm from, and we try a
20 design defect consolidated case. And we drill down to some
21 homogeneous collection of cases, whatever the device is.

22 First of all, again, we take issue whether you can make
23 it homogeneous. But, more importantly, even if we got
24 through the design defect part of the case, there's still in
25 many instances, unless it's dismissed from the case, a

1 failure to warn aspect. That would have to be tried
2 discretely or separately. There's still a causation piece
3 that, as you know, we spent considerable time at our trial
4 on that aspect of it. There's still a damages part. You
5 know, perhaps there's a punitive damage phase. Hopefully
6 not. But there are all those pieces.

7 And, so, if what we're looking for is judicial economy,
8 efficiency, getting everyone's day in court sooner, or
9 getting to an ultimate resolution a la Judge Fallon and the
10 bellwether process and what we all want to do in this room,
11 that's not going to help us.

12 Consolidated trials not only are going to be difficult
13 to manage factually, legally, and logistically, it's not
14 going to get us anywhere sooner because we're going to end
15 up with more trials. And we're going to end up, you know,
16 just doing subsequent trials. I can't even conceive of how
17 it would happen if we just focused on, say, the design
18 defect piece in one trial.

19 Now, Mr. Garrard and I have talked multiple times about
20 different permutations of this and what would we do. And he
21 talked -- you know, he mentioned, say, exemplar plaintiffs.
22 Of course, we would have a strenuous objection to doing
23 exemplar plaintiffs that were not grounded and based on
24 specific plaintiffs because, again, we would think that that
25 would be essentially a time-waster. We wouldn't be getting

1 anywhere. We would be doing an issue without linking it to
2 a given plaintiff. And that would have little, if any,
3 impact kind of on anyone's analysis of a specific case. So,
4 exemplar plaintiffs we would say would not be, be helpful.

5 And, you know, of course, there's also the risk of
6 prejudice and confusion. Mr. Garrard talked about, you
7 know, that he's been in consolidated cases. And I don't
8 think the *Mentor* case that he referred to -- and others in
9 here know more about that -- actually went to verdict, but I
10 may be wrong about that. It may have started, but I don't
11 think it went to verdict.

12 Is that right?

13 MR. GARRARD: They did not. The defendant decided
14 after a week of consolidated trial to settle the whole
15 docket.

16 MS. COHEN: Well, -- and, of course, I don't know
17 the details of that. But, again, that's not one that we saw
18 that it could go to trial.

19 The consolidation cases cited by the plaintiffs in
20 their submission, most of them relate to chemical exposures,
21 asbestos, that sort of thing. And, so, I think it would be
22 very challenging for all the reasons in our submission to,
23 to put one of these cases into a consolidated case whether
24 with other plaintiffs or even on a specific issue.

25 Now, looking at -- I would say looking at the

1 plaintiffs' numbers, because I received their submission
2 yesterday and I think it's a good, good place to also focus,
3 they are obviously arguing, as we heard this morning and we
4 saw, for West Virginia, whether it be here or Huntington.
5 And they are also arguing for cases that are -- I call it
6 more mature. They call it, I guess, ready for trial or are
7 substantially complete, whatever the phrase is that they're
8 using.

9 So, if we look at those cases -- and, Your Honor, I
10 will pass this up. I guess I can do it now or -- may I
11 proceed?

12 DISTRICT JUDGE GOODWIN: Sure.

13 MS. COHEN: Let me just pass this up to you.

14 We analyzed the plaintiffs' data they put forth. So,
15 in the West Virginia data that Mr. Garrard, you know, cited
16 to the Court and I know through Kate provided us with some
17 of this information, what I think is really interesting
18 about this is actually looking at this, I think it supports
19 what we're sort of talking about here; that this would
20 actually make it more disjointed, more confusing, and create
21 more mini trials if we were to look at the West Virginia
22 data.

23 And what I mean by that is, so, there are two hundred
24 and -- you know, about 200 cases on the list. And if you
25 look at this category of cases that Mr. Garrard is

1 suggesting are ready for trial and you take a single product
2 case -- this is just the Bard data. And if you were to take
3 Mr. Garrard's suggestion, which is we should do West
4 Virginia plaintiffs, we should do the cases that are most
5 prepared and ready for trial, which would include the
6 Avaulta Plus, the Avaulta Solo, then you'd only really drill
7 down to about 10 cases that would be ready for proceeding to
8 trial under this scenario that Mr. Garrard's proposing and
9 with which we, you know, disagree, Your Honor.

10 So, again, looking at this and, and to quote one of our
11 witnesses from the *Cisson* trial who said, "The data does not
12 lie," the data does not lie. The West Virginia data that
13 they've presented does not lie. The data that we presented
14 does not lie.

15 And what that tells you is that what we're really
16 dealing with in the vast numbers that we're all concerned
17 about and thinking about how to best deal with, we have some
18 8,000, you know, 7,900 or so cases, again just talking about
19 Bard, and one third, or 33.3 percent of those relate to SUI
20 products.

21 And whether plaintiffs are ready to proceed with those
22 or not we really need to find out, I think, what we've
23 proposed in terms of motion practice. And if they're not
24 willing to either dismiss those or have some of those, you
25 know, dismissed with motions, then we should be looking at

1 those types of cases that make up the vast majority of the
2 volume of the cases before the Court and think about
3 preparing those as opposed to sticking with the tried and
4 true, the ones that they chose to develop first, the Avaulta
5 ones which are very small in number and, again, wouldn't
6 really achieve any ultimate strategic goal if what we're
7 talking about is trying to find a way to get to the, to the
8 end result there.

9 So -- and I also, I guess, have a question in terms of
10 the plaintiffs' suggestion that they should select three
11 quarters and leave us with one-fourth. I wasn't sure what
12 the basis was of that. But we certainly if it comes to that
13 would object to that. We think it should be fair and
14 equitable.

15 But, Your Honor, I think you've read our submission and
16 I'm happy to respond to questions, but I'd like to leave
17 some time for other people to address these issues as well.

18 DISTRICT JUDGE GOODWIN: Who else wants to talk?

19 MR. MCCONNELL: Your Honor, if I may just briefly
20 on behalf of AMS, I do promise to be brief.

21 I just got a look at the plaintiffs' submission when it
22 rolled in yesterday. I found it a little bit surprising --
23 the one thing that was kind of surprising about it -- I
24 apologize if I'm wrong about this. I don't think there's a
25 single West Virginia federal case cited there. I don't

1 think there's even a case cited from the Fourth Circuit.

2 There's actually a lot of Fourth Circuit law on the
3 issue of consolidation, not just whether it's appropriate
4 and what the potential issues are in terms of confusion or,
5 or prejudice. But I think there's Fourth Circuit law on the
6 issue of timing that a Court would not entertain the concept
7 of consolidation until -- I think Ms. Cohen used the phrase
8 "mature." Until the particular action is mature, there's
9 real danger in moving precipitously. And we're not there.
10 I know AMS is certainly not there.

11 So, if, if -- I don't know what the Court's thinking of
12 going down this path. If you do, we had asked in our
13 submission if we could brief it more fully. I think there's
14 a lot more to be said, especially in terms of Fourth Circuit
15 law.

16 I will say particularly in terms of the way the
17 submission deals with AMS, and Mr. Garrard alluded to this,
18 that his proposal would be that there would be some sort of
19 consolidated trial with respect to Apogee and Perigee, which
20 are POP products.

21 And, of course, as Your Honor knows, in this litigation
22 we're kind of rounding the final curve in terms of fact
23 development and discovery on the SUI cases, not the POP
24 cases. So, it seems to me that the particular suggestion
25 regarding AMS is more opportunistic than accurate.

1 But with that being said, Your Honor -- I think you
2 used the "bulldozer" phrase before. I think consolidation
3 at this point would be a wrong turn by the bulldozer, and
4 we'd like an opportunity to talk about it more fully if we
5 could.

6 Thank you.

7 DISTRICT JUDGE GOODWIN: Anybody else from
8 defendants?

9 MS. JONES: May I just briefly, Your Honor?

10 DISTRICT JUDGE GOODWIN: Ms. Jones.

11 MS. JONES: Your Honor, I don't really wish to
12 address the issue specifically of consolidation beyond
13 saying that I simply believe it is premature at this point
14 in time to consider it for reasons that we set forth in our
15 motion that probably ought to be taken up during the Ethicon
16 time period, but that relate very specifically to the fact
17 that we now have thousands and thousands of claims about
18 whom we have very little information.

19 And we have cited in the motion, for example, that we
20 have 2,400 claims that have filed bankruptcy. A percentage
21 of those may be barred by judicial estoppel. Up to 7,200
22 claims may be barred by the statute of limitations. We have
23 3,000 claims that are totally unsupported by any evidence,
24 medical evidence, compensable injury in the sense that it
25 hasn't been -- the medical records haven't been attached to

1 the PPFs thus far.

2 And we have provided for Your Honor -- and Mr. Aylstock
3 is going to consider, we'll get back with Your Honor -- a
4 schedule under which we would provide the names and
5 identities of those parties subject to what we believe is
6 either dismissal or an order to show cause why if it's a
7 statute of limitations, judicial estoppel, lack of competent
8 injury, whatever ought to be resolved. And let's get
9 this -- the number of cases down first to what are truly
10 cases that may have some merit in this case that are not
11 barred. That's the first thing.

12 The second thing that I want to say to Your Honor is
13 that there is one thing that the plaintiffs have said that I
14 agree with, and I'd like it to go on the record.

15 Plaintiffs say in their record that there's really no
16 need for further corporate discovery on these issues. And I
17 want you to know that Ethicon and Johnson & Johnson
18 stipulate to that fact.

19 DISTRICT JUDGE GOODWIN: Thank you, Ms. Jones.

20 MS. JONES: And, and, Your Honor, if I could, I'd
21 like to introduce our client, Lisa Warren, from Johnson &
22 Johnson who is here today.

23 DISTRICT JUDGE GOODWIN: Ms. Warren.

24 MS. WARREN: Thank you.

25 MS. JONES: The third and final thing that I wish

1 to give to Your Honor, and I do have a -- I'm cutting
2 through this because I have a PowerPoint that contains all
3 of these numbers. But we did go back and look specifically
4 at the West Virginia numbers as they relate to Ethicon.

5 And what we found was that out of the 221 claims that
6 supposedly were West Virginia claims, only 93 of those were
7 truly West Virginia residents. Fewer than that said West
8 Virginia was the appropriate venue. A hundred and
9 twenty-seven of those plaintiffs -- it's the last, the last
10 two pages, Your Honor. A hundred and twenty-seven of those
11 plaintiffs were from other states.

12 But then if we look at the breakdown of the products
13 that are involved from West Virginia, it is a total
14 mismatch. The plaintiffs have selected or suggested a
15 consolidated trial of Prolift plaintiffs. And there are
16 only three Prolift-only plaintiffs on this list according to
17 the information that we have.

18 So, with all due respect, I don't think the trial of
19 any three Prolift plaintiffs consolidated or otherwise in
20 West Virginia is going to accomplish the objectives that
21 Your Honor would hope to accomplish.

22 And we think we have proposed in our motion another
23 substitute venue, a procedure that is at least worth
24 considering for moving these cases along as we move forward
25 with the bellwether cases.

1 Thank you, Your Honor.

2 DISTRICT JUDGE GOODWIN: Thank you, Ms. Jones.

3 I would ask, to the extent that your color copy machine
4 is available, if you could make several more copies of that.
5 I think distribution of this to the plaintiffs more broadly
6 might be of assistance.

7 MS. JONES: I have a couple of other copies here
8 and we'll make them available to anyone who wants them.
9 Thank you, Your Honor.

10 DISTRICT JUDGE GOODWIN: All right. Any other
11 defendant?

12 MR. ADAMS: Robert Adams for Boston Scientific.

13 Your Honor, to follow up on Ms. Jones's last point
14 regarding if we went down the road of consolidation, would
15 it be effective, Boston Scientific actually is in a similar
16 situation in that out of -- according to the Court's
17 records, there are 222 West Virginia cases. Our records
18 show actually 147 of those are actually plaintiffs who
19 reside in West Virginia. But within that pool, there are
20 only five Pinnacle cases.

21 So, again, consolidating that type of case I don't
22 think makes any sense in the broad scheme of things.

23 Also, especially with respect to Boston Scientific, I
24 would suggest that the entire thought of consolidation is
25 way premature. We haven't even got up to bat. The

1 bulldozer hasn't even got out of the yard yet with respect
2 to us.

3 DISTRICT JUDGE GOODWIN: We're heading your way.

4 MR. ADAMS: Oh, I know that. And, you know,
5 frankly, Your Honor, I think, again, we probably should have
6 had a study group regarding the Judge Fallon article. I
7 think the entire bellwether process with respect to all of
8 the defendants has to run its course.

9 The big problem that I see with consolidation under a
10 number of different types of scenarios is that
11 consolidation, because of the broad factual issues, really
12 provides no benchmarking if you're interested in settlement.
13 It creates a lot of appealable issues. And, again, at the
14 end of the day, it does not provide a very good benchmark.
15 And that's the reason why bellwether trials are effective.

16 Also along with the other defendants, if the Court is
17 going to consider this issue, you know, at a later date, we
18 ask to brief it more fully.

19 Thank you.

20 DISTRICT JUDGE GOODWIN: To the extent that I
21 think we're all in agreement that we go forward with
22 bellwethers, I want you to know that I have open now the
23 week of October 8th. And I am going to have some other
24 weeks open. And any plaintiff and defendant who want to try
25 a case, just let me know and we'll try it that week.

1 So, there is no --

2 MR. CLARK: Your Honor, may I proceed with our
3 completion?

4 DISTRICT JUDGE GOODWIN: Oh, yeah. Just a -- as
5 soon as I finish my rant.

6 There is, there is no one that wants to see these cases
7 dealt with expeditiously and judiciously and fairly more
8 than I do. I recognize that some of the Bard cases are
9 quite old. I recognize that some of the cases from even the
10 newer MDLs have injuries or illnesses that are of long
11 standing.

12 So, I understand the urgency of now, or whatever was
13 said, in terms of this litigation. I'm looking for ways to
14 get there. And so far -- and I'm -- I feel a little
15 schoolmarmish in saying this. So far, you all are best at
16 telling me why you can't do something as opposed to telling
17 me how I can do something toward that end.

18 It is -- while Judge Fallon's article says that
19 bellwether trials are the, to use a word I hear a lot, the
20 gold standard, it is my experience that -- well, it's my
21 judgment that he didn't have you all picking the bellwether
22 trials. He might have had, he might have had a different
23 opinion as to the efficacy of that process.

24 So, I'm looking for ways. I have had meetings with
25 several plaintiffs and defendants groups because these are

1 separate MDLs, separate lawyers, separate products, and so
2 forth. And I -- in individual MDLs I think people are
3 becoming more creative.

4 I'm going to go forward with the consideration of
5 consolidation and some other ideas that I have. But I'm not
6 going to make up my mind tomorrow or next week.

7 But with that, Mr. Clark, you're on.

8 MR. CLARK: Thank you, Your Honor.

9 Your Honor, I first want to start with the
10 consideration that this is not *Vioxx*. And while Judge
11 Fallon did an excellent job on *Vioxx* and has gotten a great
12 deal of attention for it, it's -- many of -- we do believe
13 that while his papers and his writings are being brought
14 down on both sides of the argument on a regular basis, I can
15 only imagine he would grow weary from being quoted as to how
16 this should be done.

17 DISTRICT JUDGE GOODWIN: Eldon likes to be quoted.
18 We went to baby judges' school together.

19 MR. CLARK: Well, in *Vioxx*, we had one drug. We
20 had 8,000 filings. And he was able to do bellwethers based
21 upon that one drug and plaintiffs that he thought were
22 representative that actually moved litigation forward.

23 In this litigation, we hear about a few products on a
24 regular basis. You hear about the six defendants. Mostly
25 you hear about the four defendants. Sometimes you only hear

1 one or two regularly. But when you consider the gravity of
2 the filings, you've got to consider also that we are now in
3 excess of 80 different products. And we lose that in this
4 conversation.

5 Yes, there may have been 8,000 filings in *Vioxx*. And,
6 of course, there was a tolling agreement that kept that from
7 swelling beyond that. But here we are now with thirty-one
8 thousand, thirty-two thousand cases filed in your court.

9 There are cases that are started but not filed that
10 could swell that number in the fifty to sixty thousand range
11 quickly in the first quarter of next year.

12 And, so, when we quote a single case that all of this
13 came from, when we talk about *Vioxx* or we talk about *Serzone*
14 or we talk about *Paxil* or *Zoloft* or any of the others that
15 we learn from in our pharmaceutical backgrounds, and we talk
16 about a judge that's been sent a particular case, a *Zoloft*
17 case, for instance, where there's 400 cases on file, and the
18 gravity of the work that judge has to undertake, and then
19 when that case settles, everybody gives a round of applause
20 for the fact that that court got it done.

21 When we argued to the JPML, both sides, most everyone
22 here believed that vaginal mesh should come here. And we
23 talked about vaginal mesh at JPML as if it was a single
24 court, as if it was a pharmaceutical drug, not a whole bunch
25 of them, certainly not 80 products. We hadn't considered

1 the gravity of what would occur. We didn't have any idea
2 the numbers of cases that would eventually be filed.

3 And, so, those cases, I believe, unwittingly on our
4 part, swelled to where they are. They've clogged your
5 docket. We're having to figure out how a district clerk can
6 even file the cases, much less how they can be handled.

7 And, yet, at the same time, we're attempting to apply
8 the bellwether model of a single product case. And
9 expectations then are that somehow or another, that there's
10 going to be magically a settlement that occurs, or that
11 there's going to be some sort of resolution.

12 I don't disagree with Ms. Jones. There are cases that
13 have been hastily filed because when we're required to work
14 in haste, while we have large numbers of cases that are
15 referred to us for handling, we can't go through every
16 detail.

17 They say no tolling agreement. We have statute of
18 limitations considerations. We file cases that have to be
19 filed. And, yes, we apologize for that. In most situations
20 where lawyers have made mistakes, they haven't gotten the
21 records timely, haven't done the homework that you would
22 expect them to do if they had time to do it. But we can
23 deal with that. We can deal with that with motions that are
24 filed.

25 There needs to be a summary judgment filed on statute

1 of limitations at some point. We can't file it. But when
2 it is filed, you'll hear evidence and determine when the
3 world became aware that mesh was a problem, not just when
4 the letter was sent to doctors or not just when the FDA may
5 have mentioned something in a writing, but when the world
6 found out.

7 And the plaintiffs are charged with the responsibility
8 of knowing that there is a relationship. We can brief that
9 for you. We can argue it in front of you. We can make a
10 decision on that.

11 But that's not an argument against bringing cases
12 together for resolution, nor is there an argument that there
13 are cases that don't properly identify the product. Of
14 course, those cases are a problem. The Court has already
15 addressed that with its most recent orders. I'm sure we'll
16 address it again in the future.

17 We have a difficult time coordinating all this because
18 of the numbers of products and the looming deadlines. That
19 problem is going to continue because we have been told
20 there's going to be no ability to toll.

21 DISTRICT JUDGE GOODWIN: Could I interrupt you a
22 second because I think this is very important. I don't view
23 filing lawsuits with no information or foundation as a
24 lawyer's mistake. I view it as a clear violation of Rule
25 11.

1 MR. CLARK: Sure.

2 DISTRICT JUDGE GOODWIN: And I will take
3 appropriate action when a motion is filed.

4 MR. CLARK: And we've recognized that in your
5 previous orders, Your Honor. And I think that you'll
6 probably find that those in this room that are aware of
7 those circumstances will not be those you'll be addressing.
8 At the same time, there are cases that will not make the
9 trip.

10 They will -- we'll get into those cases. We'll find
11 out things about them, about the mode of failure, about the
12 type of product, about the plaintiffs themselves that cause
13 those cases to become non-compensable for whatever reason.
14 That will happen as it happens in every litigation.

15 In Vioxx, since we've been continuously talking about
16 this, many of those cases were paid very low amounts in a
17 settlement or nothing in some circumstances. Every
18 settlement that's ever been done in this space addresses
19 those type of problems. It is not our desire to have
20 clients paid that are not deserving.

21 And, so, when we ask you to consider consolidation,
22 yes, of course, we start here in West Virginia. And I --
23 we, we agree. The numbers in West Virginia are low. And
24 they're, they're cumbersome to deal with because they are
25 low.

1 DISTRICT JUDGE GOODWIN: You've got some pretty
2 high numbers down in your home state.

3 MR. CLARK: Yes, we do. We have high numbers in
4 my home state and all the other larger areas of
5 concentration you would expect.

6 It's my suggestion, Your Honor, and I've been charged
7 with and asked to address requesting a road map from you,
8 where we will go beyond just basic consolidation.

9 And, of course, under 1404 and 1407, you have the right
10 to be able to transfer under 1404 or remand to the home
11 district under 1407 any group of cases that are, in your
12 opinion, homogenous and are ready to be transferred.

13 In our opinion, what we believe should be done is that
14 you should take some type of plan that addresses other
15 Article III judges in those districts to determine whether
16 or not either you can travel or they're willing to accept
17 part of your docket because if your docket swells to where
18 it is, there's not, there's not a judge that's in touch with
19 this process in the country that isn't aware of the problem
20 that you have.

21 There are courts -- some of the courts in Texas, for
22 instance, are bogged down with criminal and other issues
23 down on the border. But there are many courts with so few
24 filings, I believe they would be receptive. There's other
25 courts around the country that would do the same thing.

1 If we don't do that, then I -- my concern is this
2 bottleneck that is being created is going to have us right
3 back here doing this again this time next year. If it can
4 be done contemporaneous, we believe West Virginia should
5 become the model.

6 We believe you should take your, your rulings on
7 *Daubert*, your, your statute of limitations ruling once the
8 motions are made, any other type of information that becomes
9 the law of the case. The JPML then would consider those
10 that would be transferred under 1407. You would directly
11 transfer any 1404 cases that were filed directly here. You
12 would put homogenous cases in places where judges are
13 receptive to help you with what now is the largest MDL in
14 the country.

15 If you look at the 281 MDLs that exist today, more than
16 half of them have double-digit numbers; 24 cases, 54 cases,
17 75. Very few have in the thousands. And none at this
18 point -- even asbestos is not over 10,000. And asbestos is
19 the only MDL that will be larger than this one in the
20 history since 1968.

21 We ask for these extraordinary measures because it's
22 not possible that this Court can create enough of a process
23 that will bring us together. We need a road map as to how
24 we can move to those other jurisdictions with your, with
25 your paving the road by making those phone calls and putting

1 that in place and, and transferring only the cases that you
2 feel are ready to go so that there's no question that those
3 cases are ready to go and you have a receptive judge to help
4 you with those.

5 DISTRICT JUDGE GOODWIN: Mr. Clark, one of the
6 things in this case -- you've got a lot of experience and
7 you can help me with this. As I just said, I've got a lot
8 of weeks in this year that I'm not busy with you all. And
9 my other docket -- I don't do criminal cases now because my
10 son's prosecuting people. I've got time to work on your
11 cases. What I've got is for you all to get them ready.
12 You've got to sort them out and get them done.

13 The fact of the matter is that this problem of medical
14 records being available is not a small problem. The problem
15 of getting the cases somewhere near ready is not a small
16 problem.

17 I can't imagine at the rate we're going that I would
18 have cases by this time next year that I could send trial
19 ready in a big batch because we're not -- everybody's --
20 everybody is focusing on process issues, manipulating -- and
21 I don't mean that as a slam toward any particular person or
22 side -- manipulating whatever we put in place, and not on
23 getting to the end of the process.

24 I have six MDLs. There are differences between them.
25 You've pointed out that we've got a lot of products within

1 those six MDLs. And you're right, I think, that a lot of us
2 didn't consider the product issue and what impact that might
3 have.

4 But we've, we have got to move along quicker on sorting
5 the wheat from the chaff and getting some cases ready for
6 trial of some sort. And we're not doing that. And I'm
7 going to do that.

8 It's just that it's been my experience in dealing with
9 good lawyers like you and others that if you're properly
10 motivated, you can come up with a better scenario than I
11 can.

12 I will tell you that -- and I will have to use Mrs.
13 Fife as my witness -- that I've had some pretty wild
14 scenarios that have occurred to me in the past three weeks.
15 And she's fallen out of the chair two or three times.

16 I'll throw one out so you just understand how crazy
17 it's gotten. I've said, you know, I can just set a
18 scheduling order in every single case with deadlines and
19 nobody can stop me, and nobody will stop me. And I will
20 enforce them with sanctions. I could do that.

21 MR. CLARK: True.

22 DISTRICT JUDGE GOODWIN: But that's when she
23 blanched.

24 I want your help. I understand what you're arguing for
25 here today. I see the merit in the consolidation process.

1 I think I brought it up. And I'm going to give it very
2 serious consideration. I didn't bring it up just to hear my
3 head roar.

4 I understand the defendants' reservations about
5 consolidation. I understand -- I didn't just fall off the
6 pickle boat. I actually used to try cases back when people
7 tried cases. I am more than willing to try some.

8 I need your help, all of your help, to put in place
9 protocols of some sort that move these cases toward
10 resolution; resolution by trial, resolution by settlement,
11 resolution.

12 As long as you're picking at each other -- and I'm --
13 again, the schoolmarm is coming out. As long as you're
14 doing that, we're not getting anywhere.

15 Now, behind the scenes, I know there are better things
16 going on than I'm seeing right here in front of me because
17 I've met plaintiffs and defendants together. I just want to
18 encourage that.

19 It doesn't do any good if I've got -- and I'll use the
20 term I've heard and plaintiffs' lead counsel can quarrel
21 with it later. I've heard of these aggregators that, that
22 are calling lead counsel and saying, "Where's my money for
23 God's sakes?" And they don't even know what the cases are
24 about that they sent you.

25 I'm not, I'm not picking on the plaintiffs. I'm just

1 saying we have got to get a handle on this.

2 And I -- you know, I think that you have as many cases
3 as anybody in this MDL. You have the experience and the
4 intellect capable of doing this. I want you to lead, jump
5 in there and help me. I want to get a resolution.

6 I'm going to take all your submissions on
7 consolidation, and then I'm going to make up my own mind
8 about what I'm going to do and where I'm going to do it and
9 with what products.

10 Another one of my schemes is I can take the TVT cases
11 in Texas. And I can put together 200 or 300 cases. And I
12 can consolidate them on the design theory. I, I can do
13 that. That's not an outrageous idea.

14 So, I'm giving it all thought and I will do something.
15 But the more help you can give me and the more you all stay
16 engaged in moving the ball forward instead of thinking that
17 the defendants are all of a sudden going to get out their
18 checkbooks and write a check, the sooner we'll get this
19 overwith. They're not going to write a check until they
20 know what they're writing the check for.

21 MR. CLARK: Your Honor, one last suggestion that
22 we believe is important. And this is something that I
23 believe leads to resolution.

24 We have to have some type of expectation of discomfort
25 in the future on both sides. And that discomfort will bring

1 us together. There's no doubt in my mind.

2 DISTRICT JUDGE GOODWIN: I can do that.

3 MR. CLARK: My concern -- and we welcome it, Your
4 Honor. But -- and, so, when it comes time to make these
5 decisions, we agree that when an SUI case is worked up, we'd
6 like to see it consolidated and put to trial. When -- and
7 when POP cases are ready, if you want to do them
8 simultaneously, it just happens that the POP cases are ahead
9 of the SUI.

10 We're not asking that we get the advantage there.
11 We're saying do it simultaneously, make us both
12 uncomfortable. And I believe that will bring us together.

13 Thank you.

14 DISTRICT JUDGE GOODWIN: I'll give you an example.
15 And some of you are aware of this, and it will come up later
16 on this docket sheet.

17 When I set a bellwether case, I'm not inclined to
18 dismiss it without prejudice without some very good cause.
19 I'm just not going to do it. We went through a great
20 process to get there. I'm not doing it.

21 I didn't pick them. You all did. I didn't -- really,
22 everybody agreed to the process. So, yes, I'll make you
23 uncomfortable. We're, we're going to -- the bulldozer will
24 keep running. I'm not -- I'm just not moving as much dirt.
25 I've got a big D-8 here and I need, I need a, I need to drop

1 the blade a little bit and get a bigger bite.

2 How am I doing on the analogy?

3 MR. CLARK: With the exception of the direction
4 you're looking, Your Honor, we appreciate that.

5 DISTRICT JUDGE GOODWIN: Can we go on to the next
6 item?

7 Yes, ma'am.

8 MS. MOELLER: Debbie Moeller. Can I just -- I
9 want to address one thing that, that was just said about the
10 pharmaceutical versus medical device cases.

11 DISTRICT JUDGE GOODWIN: Uh-huh.

12 MS. MOELLER: And there have been MDLs that I've
13 been involved in in which there were multiple, multiple
14 medical devices in a single MDL. And if you look at the
15 individual MDLs here, the numbers were about the same. And
16 the Court was able to manage it by bellwether cases.

17 And once the bellwether process was in place, the
18 plaintiffs couldn't dismiss their cases. I mean, I think
19 the defendants have stood ready to, to go forward and try
20 these cases.

21 And one of the suggestions in the submission on the
22 Bard MDL is we think part of the reason that that happens is
23 we need to, to kind of separate, separate, the analogy, the
24 wheat from the chaff. And, and we're bulldozing big fields
25 and we need to figure out what field we're in. And I think

1 that --

2 DISTRICT JUDGE GOODWIN: I couldn't agree with you
3 more. And I made it clear I am moving forward with the
4 bellwether process. I have open slots of dates. And if
5 you've got a case ready to try and the plaintiff's ready,
6 call me. We'll set your case. I'm ready.

7 Okay. Let's turn to Ethicon. Let's deal first with
8 Prolift selections. I understand there may be an issue as
9 to whether these selections should have been from cases
10 filed by January 1st.

11 Who, who will address that?

12 MS. JONES: Your Honor, I think we've put that on
13 there, and I think we've kind of resolved it.

14 The plaintiffs identified two, I believe, Prolift
15 plaintiffs that at the time we had no information on. In
16 fact, suit was actually filed on those two plaintiffs in the
17 last month or two. I mean, it was so late.

18 We still don't have the information. Mr. Aylstock
19 tells me it is in the portals, wherever that, those portals
20 are. Whether they're between me and him, they're someplace.

21 And I have told him that if we get that information and
22 it is, in fact, there and in order, we won't raise it. If
23 we have an issue, we'll come back to Your Honor.

24 DISTRICT JUDGE GOODWIN: Okay. I like to skip
25 things.

1 The next item is an update on stipulations entered.
2 Two stipulations have been entered. One I entered related
3 to the corporate structure. That was under 63. Judge
4 Eifert entered one related to the documents in the hernia
5 and mesh litigations.

6 Somebody want to talk about that?

7 MR. AYLSTOCK: Your Honor, that's correct.
8 There's another one on the, on the griddle and that is the
9 pathology protocol that's going to hopefully help us both
10 when, when the explants happen, the best way to divide the
11 tissue, and so forth.

12 And that does flow right into our first trial case
13 which is the *Lewis* case. It was only recently devised.
14 There is pathology. There is explanted mesh. But the
15 hospital has it. So, that flows into a request to perhaps
16 move the trial date and the corresponding expert deadlines.

17 DISTRICT JUDGE GOODWIN: This is currently set for
18 January 14th?

19 MR. AYLSTOCK: Yes, Your Honor.

20 DISTRICT JUDGE GOODWIN: And *Brown* is the first in
21 the second round. It's set for May 27th?

22 MR. AYLSTOCK: Yes, Your Honor.

23 DISTRICT JUDGE GOODWIN: And a motion to dismiss
24 is pending in that without, without prejudice. I think I
25 made clear what I think unless Ethicon doesn't oppose it.

1 MS. JONES: Well, Your Honor, to the extent that
2 we need to, we, we do oppose the motion to dismiss without
3 prejudice. We believe that discovery has been done.

4 When we were approached by plaintiffs' counsel, it was
5 on the grounds that they couldn't travel and they had
6 medical issues. And I offered to go down and take a *de bene*
7 *esse* deposition, or even to ask Your Honor to go to Alabama
8 to try the case. And --

9 DISTRICT JUDGE GOODWIN: I've never been to
10 Alabama.

11 MS. JONES: Well, I was told that they were, that
12 they were going to file the motion nonetheless. And they
13 filed it. And my view of it is if they can't try it now,
14 they can't ever try it. It ought to be dismissed with
15 prejudice, and we ought to be entitled to our costs.

16 DISTRICT JUDGE GOODWIN: Why don't I look at the
17 papers on it and I'll make a decision. But I, I think
18 counsel for the plaintiff knows how I'm leaning.

19 MR. AYLSTOCK: Yes, Your Honor. And we'd be happy
20 to try a case in Alabama. I'm from lower Alabama.

21 DISTRICT JUDGE GOODWIN: Can we --

22 MR. AYLSTOCK: So, we -- this, this case --

23 DISTRICT JUDGE GOODWIN: Are there any good
24 football games coming up?

25 MR. AYLSTOCK: There's a few, Your Honor. This

1 case may present one of those unique circumstances given the
2 psychological issues.

3 DISTRICT JUDGE GOODWIN: I'll certainly look at
4 it.

5 MR. AYLSTOCK: Thank you, Judge.

6 DISTRICT JUDGE GOODWIN: Do you all have anything
7 else on that?

8 MR. AYLSTOCK: No. To the extent that -- you
9 know, there's some items here about request for
10 supplementation and expert discovery and so forth. To the
11 extent the Court might be amenable to, to moving those
12 deadlines, I think the rest of the agenda can simply be
13 disposed of. We'll await your order on that.

14 DISTRICT JUDGE GOODWIN: Do you agree with that,
15 Ms. Jones?

16 MS. JONES: I do, Your Honor, if the -- if, in
17 fact, the, the deadline is moved three or four weeks, I
18 think that eliminates any problem. If not, we may be back
19 talking to Your Honor.

20 DISTRICT JUDGE GOODWIN: All right. We'll do
21 that.

22 MR. AYLSTOCK: Thank you.

23 DISTRICT JUDGE GOODWIN: All right. Well, I'll
24 skip to the end of the Ethicon agenda and go to Boston
25 Scientific. The only item on their agenda is a general

1 update and progress.

2 Who will report? Does it fall to you?

3 MR. ADAMS: I'd be happy to, Your Honor. There's
4 really nothing to report. We're moving forward and getting
5 our four bellwether cases ready for trial. Our trial is
6 currently set for February 11th.

7 DISTRICT JUDGE GOODWIN: I think you owe me a
8 docket control order.

9 MR. ADAMS: No. We submitted that, I believe, 10
10 days ago.

11 DISTRICT JUDGE GOODWIN: Okay.

12 Well, let's go to Bard because I haven't talked with
13 Mr. Garrard for a long time.

14 MR. GARRARD: We are --

15 DISTRICT JUDGE GOODWIN: We've talked about a lot
16 of this stuff. I know -- I'm sorry. I didn't mean to
17 interrupt you. I know Ms. Cohen wants to talk about shotgun
18 complaints. I think I've made my views known on that,
19 but --

20 MR. GARRARD: I understand your views, Your Honor.
21 Ms. Cohen asked for that to be on the docket.

22 MS. COHEN: Well, Mr. North is going to address
23 that, but just one quick report, Judge.

24 And this may not have been clear from what I said and
25 Ms. Moeller said earlier but, as you know, I'm, I was sort

1 of a new --

2 DISTRICT JUDGE GOODWIN: I'm sorry?

3 MS. COHEN: I was a new, a new person put in the
4 Bard litigation this year, but there were only five
5 bellwether cases that had been worked up in terms of
6 discovery.

7 And, so, going back to what we talked about earlier,
8 you know, in terms of having cases ready to try, there
9 really were only five that were discovered. I mean, I would
10 propose perhaps getting together with Mr. Garrard after this
11 and talking about, you know, putting together somekind of a
12 schedule for some other group of cases.

13 DISTRICT JUDGE GOODWIN: I encourage you to do
14 that.

15 MS. COHEN: And we can work on that. And I would
16 just state again that of the five cases that were discovered
17 and ready for trial, plaintiffs dismissed two of those.

18 And, so, that's part of our, you know, issue now when
19 it comes to why we can't jump into the October space and
20 fill it because basically the only other case that's left is
21 *Jones* which is ready for trial in November.

22 DISTRICT JUDGE GOODWIN: Since I'll be seeing you
23 all in a couple weeks, I'll let you try to work out a path
24 forward. There was a time when you were so tied up in
25 trial --

1 MS. COHEN: Right.

2 DISTRICT JUDGE GOODWIN: -- that some of these
3 process matters were something I didn't think I could push
4 you on. But you've worked well together up till now. I
5 expect you to continue to do that.

6 MR. GARRARD: We stand ready from our side to
7 submit to the Court some proposed consolidated cases to try.

8 MS. COHEN: And we stand ready to propose some
9 bellwether trials.

10 MR. GARRARD: Well, that --

11 DISTRICT JUDGE GOODWIN: And both of you can
12 propose cases that you will work up for discovery.

13 MS. COHEN: Exactly, Your Honor. And I do think
14 we do need to do that because we're out of, out of cases
15 right now.

16 MR. GARRARD: A consolidated case serves as well
17 as a bellwether, Your Honor. I don't think there's anything
18 else from --

19 DISTRICT JUDGE GOODWIN: I understand your
20 argument and I've only read half of your submission, but I
21 bet you've covered most of it.

22 MR. GARRARD: I did, Your Honor.

23 MS. COHEN: And, Your Honor, Mr. North may have
24 something to add on the shotgun complaints.

25 DISTRICT JUDGE GOODWIN: Mr. North.

1 MR. NORTH: Yes, Your Honor.

2 I know you have addressed the shotgun complaints. We
3 just want to put it on the record how bothersome this is to
4 us, as I think it is to many of the defendants. And we'll
5 probably be coming back to the Court after the filings are
6 complete on this.

7 As of this moment, Bard has approximately 5,800
8 plaintiffs that do not involve the Sofradim or TSL product.
9 And out of that 5,800 plaintiffs, 1,600 have no identified
10 product involved.

11 So, it is a matter of great concern to us and we just
12 wanted to put that on the record.

13 DISTRICT JUDGE GOODWIN: It should be of great
14 concern to the plaintiffs who filed a complaint like that
15 because the, the response from the Court will be
16 appropriate.

17 AMS? The only item is a new schedule for the first
18 bellwether trial and some adjustment for the internal
19 deadlines.

20 I met yesterday with the parties in AMS. We had a very
21 productive meeting. With regard to the rescheduling of the
22 December trial, I think we've got that pretty close to
23 worked out. And there will be a trial date in early spring.

24 Either side have anything to add to that?

25 MS. FITZPATRICK: Nothing from the plaintiffs,

1 Your Honor.

2 DISTRICT JUDGE GOODWIN: All right.

3 Coloplast. I met this morning with the, both parties
4 in the Coloplast litigation. Since I have been
5 schoolmarmish all morning, I think I -- you know, that's
6 very gender neutral for me, isn't it.

7 We had a very productive meeting, and I want to brag on
8 the lawyers in Coloplast. They've developed a protocol and
9 a methodology going -- a path, as Mr. Clark would say, for
10 going forward within their MDL that I find very good.
11 They've -- it seems to be working well for them.

12 I'm not saying that it would work for everybody, but it
13 is a very well thought-out, complete, careful protocol. And
14 they're moving forward quickly.

15 Just so everybody knows that as good as it is and as
16 carefully as they're working, I've set a deadline of the end
17 of the year. And if it hasn't resulted in a substantial
18 resolution by that time, there will be an extraordinarily
19 abbreviated scheduling order put in place. And they know
20 that.

21 Cook. The first item is the status or the result of
22 the 30(b)(6) deposition of the Cook representative.

23 Does anybody want to report on that?

24 MR. ANDERSON: Sure, Your Honor. Ben Anderson.

25 DISTRICT JUDGE GOODWIN: All right. Mr. Anderson,

1 go ahead.

2 MR. ANDERSON: All right. Ben Anderson on behalf
3 of plaintiffs. Thank you, Your Honor.

4 DISTRICT JUDGE GOODWIN: Yes.

5 MR. ANDERSON: The 30(b)(6) deposition, as you
6 know, was agreed upon so that we tried to come to the proper
7 party defendants. That occurred less than 48 hours ago.
8 So, we are just now obtaining the transcript and the
9 exhibits from that so that as leadership we can vet that.

10 We did have a breakfast meeting this morning. We have
11 had numerous meet-and-confers, as you know, with Cook
12 counsel over the last few weeks and the last couple of
13 months in trying to resolve numerous PTO issues and
14 housekeeping matters in order to set the foundation for the
15 case going forward.

16 And as you know, this is a crucial part of that which
17 affects all of our master pleadings and our discovery and
18 whatnot.

19 So, we do believe that after the meeting this morning
20 that we're moving closer. And what we're trying to do is
21 see if we can craft a stipulation that will cover the
22 various entities to ensure that we have proper insurance
23 coverage and whatnot, and that we have the proper ones --
24 the last thing we want to do is to have to engage in a
25 motion practice and involve the Court any further than it

1 already is. So, we hope that by early next week we have
2 some sort of stipulation in place.

3 DISTRICT JUDGE GOODWIN: Yeah. I need a super
4 short deadline on that.

5 MR. ANDERSON: Okay.

6 DISTRICT JUDGE GOODWIN: Actually, Judge Eifert
7 does.

8 MR. ANDERSON: Today is Thursday. How does
9 Tuesday sound?

10 DISTRICT JUDGE GOODWIN: That's fine.

11 MR. ANDERSON: So, we hope to have something by
12 then agreed upon. If not, we would ask for an immediate
13 briefing schedule or a conference with Your Honor, whichever
14 you would prefer.

15 MR. KING: Your Honor, Doug King for Cook. In
16 that regard, we have actually already tendered to the
17 plaintiffs a proposed order that was based on the AMS/ENDO
18 order which we -- I suggested again to Mr. Anderson this
19 morning that I don't see how he's prejudiced by not agreeing
20 to it. So, --

21 DISTRICT JUDGE GOODWIN: Judge Eifert is available
22 in person and by phone. And let's get this done in the next
23 couple days.

24 MR. KING: Thank you, Your Honor.

25 MR. ANDERSON: Thank you, Your Honor.

1 DISTRICT JUDGE GOODWIN: I guess -- I also need
2 the entry of the PTO related to the profile form fact sheet.

3 MR. KING: We agreed on that this morning, Your
4 Honor. The Pre-Trial Order Number 7 that we had tendered to
5 them, they, we talked about and they've accepted it.

6 Correct?

7 MR. CRUMP: That's correct, Your Honor.

8 DISTRICT JUDGE GOODWIN: Next status conference is
9 scheduled for Thursday, November 7th, at 12:00 p.m. No
10 lead, liaison, or high muckety-muck counsel for either side
11 will be excused absent good cause.

12 MR. CRUMP: Your Honor, --

13 DISTRICT JUDGE GOODWIN: Yes, sir.

14 MR. CRUMP: -- I'm sorry to interrupt, Judge, but
15 unfortunately I think we have reached an impasse on the
16 protective order that is listed on the agenda.

17 The plaintiffs essentially were, were fine with
18 entering protective orders that had been entered in previous
19 litigations. However, the defendants, in our opinion, have
20 substantially changed the provisions and the terms of the --

21 DISTRICT JUDGE GOODWIN: Judge Eifert will meet
22 with you in my conference room immediately following this.

23 MR. CRUMP: Thank you, Judge.

24 MR. KING: Thank you, Your Honor.

25 DISTRICT JUDGE GOODWIN: Anything else to come

1 before the Court?

2 MR. GARRARD: No, sir.

3 DISTRICT JUDGE GOODWIN: All right. Court's
4 adjourned.

5 (Proceedings concluded at 11:40 a.m.)
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1 I, Lisa A. Cook, Official Reporter of the United
2 States District Court for the Southern District of West
3 Virginia, do hereby certify that the foregoing is a true and
4 correct transcript, to the best of my ability, from the
5 record of proceedings in the above-entitled matter.

6
7
8 s\Lisa A. Cook

September 26, 2013

9 Reporter

Date

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